

Questions and Answers About the Michigan Statutory Will

1. What happens if I die without a will?

With certain exceptions, your possessions are divided according to state law among your closest relatives. You are said to have died "intestate."

2. What can I accomplish by making out a will?

You can choose who is to receive your property; select someone to serve as personal representative (formerly known as executor); and appoint a guardian for your children under age 18. A person who dies having made a valid will is said to have died "testate."

3. If I have a will, do I avoid probate?

No. Whether or not you die with a will, your property will usually go through probate, which is a process through which the probate court oversees distribution of your assets. If there is a will, the initial purpose of probate is to prove that the will is valid.

4. Does all property go through probate?

No. For example, money held in a joint bank account automatically belongs to the other owner. If your spouse's or child's name is on the deed to your house, the house automatically belongs to him or her. Life insurance benefits go directly to the beneficiary named in the policy. A will has no effect on these types of property, which are known collectively as the "non-probate" estate.

5. If property is specified in my will, can I give it away or sell it during my life?

Yes. Your will has absolutely no effect until you die. If you have sold or given away property mentioned in the will, that provision of the will is simply ignored; this has no effect on the rest of your will.

6. Are there different types of wills?

Yes. There are handwritten wills, typewritten wills, and statutory wills. Each type is equally valid if done precisely in accordance with the law. It is recommended you see a lawyer if you do not use the statutory will.

7. What can I accomplish through using a statutory will?

- (a) You can leave up to two cash gifts of any amount to people or charities.
- (b) You can write a list of personal and household items, and name who is to receive each item.
- (c) The rest of your property goes to your husband or wife. If he or she dies before you, this property would be divided equally among your children.
- (d) You can select a personal representative to administer your property.
- (e) You can appoint a guardian and conservator in case you and your spouse both die before your children reach age 18.

8. Are there any reasons for me NOT to use the statutory will?

There may be. If you have substantial wealth and need tax planning for your estate, you should consult a lawyer who handles estate planning and probate. If you think you might have such problems, speak with a lawyer to see if more complex planning is indicated. Consultation with a lawyer is strongly recommended if you want to establish a trust fund for your children's education, if you have assets outside the state of Michigan, or if you have a significant interest in a business partnership.

9. I have a wife and two young children. Might a statutory will be appropriate for my purposes?

Perhaps. A statutory will might be appropriate if you do not have extensive assets and, therefore, do not need tax planning.

In a statutory will, you can appoint a guardian for your children and a conservator for your children's assets.

10. I would like to leave my favorite niece an antique brooch. Can I do this with a statutory will?

Yes. A statutory will allows you to leave gifts of personal items by making a list of the items and the person you want to receive each item.

11. I am a widow with no children. Could a statutory will be appropriate for me?

If you do not have substantial assets and you do not object to the limited options for disposing of your property, you may want to use the simple statutory form.

12. I own a house, a condominium, and much stock. Should I use a statutory will?

Perhaps not. A statutory will is not designed to reduce federal or state taxes on your estate. If you have very substantial assets, check with a lawyer to see if tax planning is recommended.

13. I am married for the second time and my husband and I each have children from our first marriages. Would a statutory will be appropriate for my purposes?

Probably not. The statutory will provides that your estate goes to your husband if he survives you. The statutory will does not give you an adequate way to provide for the children from your first marriage. Speaking with a lawyer is certainly a good idea for a person involved in a second marriage.

14. I have rather complicated business interests, which I wish to pass on through my will. Would a statutory will be appropriate for my purposes?

No. A statutory will does not provide for any specific business planning.

15. What should I do if a statutory will doesn't meet my needs?

Contact a lawyer with knowledge of estate planning. He or she can draft a will to meet your specific needs.

16. How can I find a good lawyer?

There is no sure-fire way. Here are some suggestions:

(a) If you have dealt with a lawyer in the past and were satisfied, go back to that person. A lawyer who does not handle estate planning will be happy to recommend someone who does.

(b) Ask friends, neighbors, or relatives for someone they have been pleased with.

(c) Ask a person you respect, such as a religious leader, or call an organization such as a consumer group or your labor union.

(d) Call the county or state bar referral service, which will provide you with the names of two or three lawyers.

(e) Consult the yellow pages of newspaper classified section.

Don't be intimidated. Don't be afraid to "shop around" for someone you are comfortable with and whose services you can afford.

17. How do I proceed to use the statutory will form?

First, thoroughly read the entire form. Read the notice at the beginning and the definitions at the end.

After you are sure you understand all of the will's provisions, carefully follow directions and fill in the blanks.

In reading over the form, the following questions may arise.

18. May I use a statutory will form and yet leave no cash gifts? (Article 2.1)

Yes. You may leave no cash gifts, one cash gift, or two cash gifts. If you do leave a cash gift, it is particularly important that you give a complete address for the person or charity to receive the money.

19. How do I go about preparing a list of personal items? (Article 2.2)

If you wish, you may make a list on a separate piece of paper of possessions such as jewelry, books, automobiles, furniture, and other personal and household items. On the list you name who is to receive each item - a family member, friend, or neighbor.

The list can be as short or long as you choose. Make sure you describe each item sufficiently to avoid confusion. For each person who is to get an item, include his or her full name and address.

The list must be in your handwriting or signed by you. It is a very good idea to include the date.

You may make the list before you complete the statutory will form, at the same time, or afterward. You can change the list as often as you wish. It is a good idea to staple or firmly attach the newest list to your will.

20. What is the purpose of Article 2.3?

This provision sets out the division of your property (other than cash gifts and the list of items) if your spouse, children, grandchildren and great-grandchildren all die before you.

21. Need I complete Article 3.2 if all of my children are over 18?

No. You may skip Article 3.2 relating to guardians and conservators.

22. How do I decide whether to have my personal representative serve with or without bond? (Article 3.3)

Most people these days request that the personal representative serve without bond. If you are careful to choose a person you trust to be personal representative, there seems little need to spend your money for a bond.

23. Who may be a witness to my will?

Any adult who will not receive any possessions or money under your will may be a witness. This is important. A person who may receive money or property under your will should never be a witness to your will.

You need not tell witnesses about the contents of your will.

24. After the will is completed, where should I keep it?

One option is to file it in probate court at the cost of \$5.00. Wherever you keep the will, it is a good idea to attach the list of personal items to the will. You may want to give a copy of the will to the person you have selected as personal representative.

25. Can I make changes to my statutory will?

Yes. Since a will has absolutely no effect until you die, you can change the will during your life. But do not write on the will. You can either have a codicil (amendment) drafted, complete a new statutory will, or have an entire new will drafted by a lawyer. If you sign a new will, destroy copies of the old one.

You can change the list of personal property items at any time. It is probably best to write a whole new list if you decide to make changes.

26. If I move from Michigan would my statutory will still be valid?

Probably yes. It would be a good idea to check with a lawyer who practices law in the state of your new residence.